

SERVICE DATE – NOVEMBER 20, 2018

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36234<sup>1</sup>

NORTH CENTRAL MISSISSIPPI REGIONAL RAILROAD AUTHORITY  
—CONTINUANCE IN CONTROL EXEMPTION

Docket No. FD 36182

NORTH CENTRAL MISSISSIPPI REGIONAL RAILROAD AUTHORITY—ACQUISITION  
AND OPERATION EXEMPTION—MISSISSIPPI DEPARTMENT OF TRANSPORTATION

Digest:<sup>2</sup> This decision allows North Central Mississippi Regional Railroad Authority (NCMRRA), a noncarrier, to continue in control of Grenada Railway, LLC (GRYR), a Class III carrier currently owned and controlled by NCMRRA, when NCMRRA becomes a Class III rail carrier in a related transaction involving its acquisition of a rail line.

Decided: November 15, 2018

By petition filed on October 19, 2018, North Central Mississippi Regional Railroad Authority (NCMRRA) seeks an exemption under 49 U.S.C. § 10502 from the prior approval requirements of 49 U.S.C. § 11323 to continue in control of Grenada Railway, LLC (GRYR), a Class III carrier currently owned and controlled by NCMRRA, upon NCMRRA's becoming a rail carrier once it acquires a rail line. As discussed below, the Board will grant the exemption.

BACKGROUND

NCMRRA, a regional railroad authority created pursuant to Mississippi law in 2012 to protect long-term rail service in the region, is a noncarrier that currently owns and controls GRYR, a Class III rail carrier that operates rail lines located in Grenada, Montgomery, Carroll, Holmes, Yazoo, Madison, and Yalobusha Counties, Miss. (Pet. 3.) In a related transaction in Docket No. FD 36182, NCMRRA has filed a verified notice of exemption to acquire and operate a 21.70-mile rail line, currently owned by the Mississippi Department of Transportation

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<sup>1</sup> These proceedings are not consolidated. A single decision is being issued for administrative purposes.

<sup>2</sup> The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

(MSDOT), that extends from milepost H-0.20 (at Aberdeen Junction) to milepost H-21.90 (at Kosciusko), in Holmes and Attala Counties, Miss. (Kosciusko Line).<sup>3</sup> NCMRRA states that upon consummation of the acquisition transaction, NCMRRA (which will become a Class III rail carrier) and GRYR will exist as separately managed and maintained entities within the same corporate family. (Pet. 4.)<sup>4</sup>

In support of its petition, NCMRRA states that the transactions will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family. (*Id.*) NCMRRA also states that neither of the transactions involves any provision or agreement that would limit NCMRRA or GRYR's future interchange with any third-party connecting carriers. (*Id.* at 5.) NCMRRA asserts that granting the exemption will allow it to dedicate its limited resources to the preservation of freight rail service and will promote several enumerated goals of the rail transportation policy (RTP), and that the transportation options currently available to shippers will be preserved. (*Id.* at 7.)

NCMRRA further notes that while the proposed control transaction does not involve a Class I carrier, the transaction does not qualify for the class exemption under 49 C.F.R. § 1180.2(d)(2) because NCMRRA and GRYR connect at or near Aberdeen Junction. Accordingly, NCMRRA is filing the petition to secure authority to continue in control of GRYR once NCMRRA becomes a rail carrier. (*Id.* at 4.)

NCMRRA requests expedited consideration in view of the fact that it first sought authority for the transactions proposed in these proceedings under verified notices of exemption that were scheduled to become effective on October 13, 2018.<sup>5</sup>

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<sup>3</sup> The notice of exemption for the rail line acquisition in Docket No. FD 36182 was held in abeyance and its effective date postponed until further Board order. See N. Cent. Miss. Reg'l R.R. Auth.—Acquis. & Operation Exemption—Miss. Dep't of Transp. (October 12 Decision), FD 36182 et al. (STB served Oct. 12, 2018). The notice of exemption in Docket No. FD 36182 will be taken out of abeyance and will be published in the Federal Register concurrently with this decision.

<sup>4</sup> A map of GRYR and the line to be acquired by NCMRRA is attached to the petition as Exhibit A.

<sup>5</sup> NCMRRA and GRYR initially sought authorization for NCMRRA to continue in control of both rail carriers pursuant to a verified notice of exemption under 49 C.F.R. § 1180.2(d)(3) for a transaction within a corporate family. See Verified Notice, Sept. 13, 2018, N. Cent. Miss. Reg'l R.R. Auth. & Grenada Ry.—Corp. Fam. Transaction Exemption, FD 36224 (Sept. 13, 2018 Verified Notice). In the October 12 Decision, the Board rejected the corporate family exemption as an inappropriate procedure for obtaining the requisite authority and directed NCMRRA to file a petition for exemption if it wished to do so.

## DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. § 11323, prior approval by the Board is required for transactions involving the common control of two rail carriers.<sup>6</sup> Under 49 U.S.C. § 10502(a), however, the Board must exempt a transaction from regulation if it finds that: (1) regulation is not necessary to carry out the RTP of 49 U.S.C. § 10101; and (2) either (a) the transaction is limited in scope, or (b) regulation is not needed to protect shippers from the abuse of market power.

Detailed scrutiny of the proposed control transaction through an application for review and approval under 49 U.S.C. §§ 11323-25 is not necessary here to carry out the RTP. Rather, an exemption would promote the RTP by minimizing the need for federal regulatory control over the proposed transaction and reducing regulatory barriers to entry. 49 U.S.C. §§ 10101(2) and (7). Granting an exemption in this proceeding would also help to ensure that a sound rail transportation system will continue to meet the needs of the shipping public, help to foster sound economic conditions in transportation, enhance coordination between rail carriers, and encourage efficient management. 49 U.S.C. §§ 10101 (4), (5), and (9). Other aspects of the RTP would not be adversely affected.

Regulation of the control transaction is not needed to protect shippers from an abuse of market power.<sup>7</sup> According to NCMRRA, it would simply become the owner, operator, and provider of service over the Kosciusko Line, while GRYR would continue to own and lease its rail lines as it did prior to NCMRRA's acquisition of the Kosciusko Line. The transaction thus would not result in any current shipper on these lines losing access to rail service or foreclose any transportation options currently available to shippers on either the Kosciusko Line or GYRY's line. (Pet. 7-9.) Moreover, no shipper (or any other entity) has objected to the control transaction or to NCMRRA's proposed acquisition and operation of the Kosciusko Line in Docket No. FD 36182.

Under 49 U.S.C. § 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under §§ 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

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<sup>6</sup> NCMRRA's suggestion that this petition should be dismissed as unnecessary is misplaced. (See Pet. 6 n.5.) As the October 12 Decision explained, the proposed transaction requires continuance in control authority from the Board, as NCMRRA's acquisition of the Kosciusko Line will result in two operating carriers within the same corporate family where before there was only one. October 12 Decision, slip op. at 2 (citing 49 U.S.C. § 11323).

<sup>7</sup> Given this finding, the Board need not determine whether the transaction is limited in scope.

The control transaction is exempt from environmental reporting requirements under 49 C.F.R. § 1105.6(c)(1)(i) because it will not result in any significant change in carrier operations. Similarly, the transaction is exempt from the historic reporting requirements under 49 C.F.R. § 1105.8(b)(3), because it will not substantially change the level of maintenance of railroad properties.

As indicated, NCMRRA has requested expedited consideration of its petition for exemption. The Board finds that NCMRRA's request is reasonable. Accordingly, this decision is being issued on an expedited basis and the effective date of the exemption will be December 4, 2018. See 49 C.F.R. § 1121.4(e).

It is ordered:

1. Under 49 U.S.C. § 10502, the Board exempts from the prior approval requirements of 49 U.S.C. §§ 11323-25 NCMRRA's continuance in control of GRYR when NCMRRA acquires the Kosciusko Line and becomes a rail carrier.

2. Notice of the control exemption will be published in the Federal Register on November 20, 2018.

3. The control exemption will be effective on December 4, 2018. Petitions for stay must be filed by November 27, 2018. Petitions to reopen must be filed by December 10, 2018.

4. The notice of exemption for the rail line acquisition in Docket No. FD 36182 is taken out of abeyance and will be published in the Federal Register concurrently with this decision.

By the Board, Board Members Begeman and Miller.